HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 826 /06

Anoop Tuteja,

VS

Rent Control & Eviction

Officer, Dehradun & others

Approved for reporting

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~~Not approved for reporting~~

Date of decision: 01.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 826 (MS) OF 2001

Anoop Tuteja,
S/o Shri Jagdish Tuteja,
R/o 31, Patel Road, Dehradun,
District-Dehradun. .....Petitioner

Versus

1. Rent Control & Eviction Officer, Dehradun.
2. Lalit Mohan Gupta, S/o Shri Sadhu Ram, R/o 31, Patel Road, Dehradun, District Dehradun.
3. Smt. Rukmani Devi,
   W/O Shri Sriram Gupta,
   R/o 31, Patel Road, Dehradun,
   District-Dehradun.

.....Respondents.

Dated: 01.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ramji Srivastava, Advocate for the petitioner and Standing Counsel for the respondent no.1.

By the preset writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 17th June, 2006 passed by the Rent Control & Eviction Officer in Case No. 55 of 1999.

Briefly stated, according to the case of the petitioner, the respondent no. 2 Lalit Mohan Gupta has moved an application under Rule 10 (1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction), Rules, 1972 before the Rent Control Eviction officer for allotment of the ground floor of

property No. 31, Patel Road, Dehradun consisting of one room of 10' X12', one covered verandah of 8'X10' one kitchen and one latrine bathroom, jointly with other tenants under the tenancy of Jagdish Tuteja/father of the petitioner. The case was registered as Case No. 55 of 1999.

The report of the Rent Control Inspector was submitted on 22.08.2003 and it was found that the petitioner was living in the property in question and the house-hold articles were also present. However, on 17.06.2006, the Rent Control Eviction Officer has declared the vacancy and fixed 4th July, 2006 for allotment of the property in question. The petitioner has challenged the order of vacancy by way of present writ petition on the ground that in view of the report of the Inspector, the premises cannot be declared vacant.

A perusal of the order dated 17th June, 2006 shows that only vacancy has been declared and the proceedings for allotment is still pending and as such in view of the judgment of ***Achal Mishra Vs. Ram Shankar Singh reported in 2005 (1) ARC Page 887,*** the remedy of filing the revision is available with the petitioner. The relevant observation are quoted below:-

"It is thus clear that an order notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken to challenge the final order, as being an order which is preliminary step in the process of decision making and in passing the final order. Hence, in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged. The decision in Ganpath Roy's case which has disapproved the ratio of the decision in M/s Trilok Singh and Co., cannot be understood as laying down that the failure to challenge the

order notifying the vacancy then and there, would result in the loss of right to the aggrieved person of challenging the notifying the vacancy itself, in a revision against the final order of allotment. It has only clarified that even the order notifying the vacancy could be immediately and independently challenged. The High court, in our view has misunderstood the effect of the decision of this court in Ganpat Roy's case and has not kept in mind the general principles of law governing such a question as expounded by the Privy Council and by this Court. It is nobody's case that there is anything in the Act corresponding either to Section 97 or to Section 105 (2) of the Code of Civil Procedure, 1908 precluding a challenge in respect of an order which ultimately leads to the final order. We overrule the view taken by the Allahabad High Court in the present case and in Smt. Kunj Lata v. Xth Additional District Judge, Kanpur Nagar and others (supra) that in a revision against the final order, the order notifying the vacancy could not be challenged and that the failure to independently challenge the order notifying the vacancy would preclude a successful challenge to the allotment order itself. In fact, the person aggrieved by the order notifying the vacancy can be said to have two options available. Either to challenge the order notifying the vacancy then and there by way of a writ petition or to make the statutory challenge after a final order of allotment has been made and if he is aggrieved even thereafter, to approach the High Court. It would really be a case of election of remedies."

In view of the aforesaid, liberty is given to the petitioner to file the revision before the District Judge in case final order is passed by the Rent Control and Eviction officer under Section 16 of U.P. Act No. 13 of 1972. Liberty is given to the petitioner to challenge the final order in revision before the

District Judge. However, the petitioner shall not be dispossessed from the premises in dispute.

Consequently, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

01.07.2006
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